

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ARTYARNS, INC.,

Plaintiff,

Civil Action No. 07-3823 (JGK)(THK)

-v-

TRACY JAY ROBINSON and THOMAS  
C. JAY d/b/a TILLI TOMAS and TILLI  
TOMAS, INC.,

COMPLAINT

Defendants.

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The Plaintiff, Artyarns, Inc., by its attorneys, Natter & Natter, for its complaint against the Defendants, Tracy Jay Robinson and Thomas C. Jay d/b/a Tilli Tomas and Tilli Tomas, Inc., alleges as follows:

1. The Plaintiff, Artyarns, Inc., is a New York corporation having an office and principal place of business at 39 Westmoreland Avenue, White Plains, NY.
2. The Defendants, Tracy Jay Robinson and Thomas C. Jay, are citizens of the state of Massachusetts having and address at 72 Woodland Road, Jamaica Plain MA 02130.
3. The Defendant, Tilli Tomas, Inc. is a Massachusetts corporation having an address at 72 Woodland Road, Jamaica Plain MA 02130.

4. Upon information and belief, the Defendants, Tracy Jay Robinson and Thomas C. Jay d/b/a Tilli Tomas and Tilli Tomas, Inc., are subject to personal jurisdiction of the courts of the State of New York for the reason that they transact business within the State of New York and are otherwise subject to the personal jurisdiction of the courts within the State of New York as provided under CPLR §302.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 in that the amount in controversy exceeds \$75,000, exclusive of interest and costs and there is complete diversity of citizenship between the plaintiff and the defendants; jurisdiction is also premised upon 28 U.S.C. §1338 (a) and (b) in that the subject matter arises under an Act of Congress relating to trademarks (15 U.S.C. §1125) and a claim of unfair competition related thereto.

6. Venue is proper in this district pursuant to 28 U.S.C. §1391 and §1400.

7. This is an action for a declaratory judgment and appropriate relief pursuant to 28 U.S.C. §2201. An actual controversy exists between the parties and within the jurisdiction of this Court.

#### *Background*

8. Iris Schreier, a principal of the Plaintiff, Artyarns, Inc., is a renowned authority on knitting.

9. She has authored three knitting books, *Exquisite Little Knits*, Lark Books, published Fall 2004, *Modular Knits*, Lark Books, published Fall 2005 and *Lacy Little Knits* (scheduled for release June 2007).

10. The general format of Ms. Schreier's knitting books is to feature photographs of various clothing or other items having knit fabric designs created and knitted by Ms. Schreier and to include step-by-step instructions for the reader to knit the items.

11. Ms. Schreier's first book, *Exquisite Little Knits*, was extremely popular and sold tens of thousands of copies.

12. Ms. Schreier's second book, *Modular Knits*, features modular knitting techniques utilizing hand painted yarns.

13. Ms. Schreier teaches knitting workshops; her patterns and instructions have been translated into several languages; she has appeared on several television programs featuring knitting; her articles and patterns have been featured in magazines and she founded an on-line knitting group currently having over 3,500 members.

14. In 2002, Ms. Schreier began a business hand dying and distributing imported custom luxury yarns and in 2003 began manufacturing custom hand painted high quality luxury yarns. In April 2004 the business was incorporated as Artyarns Inc., the Plaintiff herein.

15. In conjunction with each of Ms. Schreier's books, Ms. Schreier obtained yarn samples from various suppliers and knitted clothing or other item for possible inclusion in the respective books, subject to editorial review.

16. The understanding between Ms. Schreier and her publisher was that she would knit items for inclusion in her book with yarns from different sources and not exclusively from her own company, Artyarns.

17. In January 2006, after commencing her third book, Ms. Schreier and her publisher agreed that the third book could feature knitted items made exclusively from yarn supplied by Artyarns.

*Beaded Yarn*

18. Bead or beaded yarn, i.e. yarn with either a small bead or a lump of beadlike hardened gelatin or plastic material added to the yarn at intervals, has been known since at least as early as the 1800's.

19. Examples of beaded fabrics dating to the 1800's are in a collection at Musée D'Art et d'Industrie André Diligent at Roubaix, France.

20. More recently, during the 1990's in the United States, beaded yarns were available from suppliers such as Anny Blatt and Crystal Palace Yarns; beaded yarns are currently available from companies such as Alpine Meadow Yarns and Moda Dea.

21. In 2003, Ms. Schreier met with Meadowbrook Inventions, Inc. and obtained samples of two different beaded yarns which they offered for sale; Ms. Schreier knitted a sample piece with one of the beaded yarns supplied by Meadowbrook. The Meadowbrook beaded yarns were not used for knitted items incorporated in her book.

22. In July 2004, Ms. Schreier met with a supplier of beaded yarns and eventually contracted with that supplier to supply beaded silk base yarn to Artyarns.

23. Artyarns manufactures its beaded silk yarns at its facilities in White Plains NY utilizing beaded base yarn which is blended and twisted with various other silk yarns on specially configured equipment. Artyarns manufacturing processes also include hand painting, drying and wrapping the beaded yarns.

24. Artyarns manufactures and distributes a selection of 14 different yarn fibers, inclusive of beaded silk, each of which is available in any of 60 different hand painted solid colors and 62 different hand painted varigated colors.

25. Since its introduction, Artyarns' beaded silk yarns have gained popularity and have become a valuable attribute to the reputation of Artyarns.

26. Artyarns' beaded silk yarns have received unsolicited recognition as "SILKEN TREASURE" in the knitting magazine, *Vogue Knitting*, Summer of 2007, with laudatory reference to the "sumptuous colorways Artyarns is known for".

#### *The Controversy*

27. By letter dated April 18, 2007, Christopher Jantzen, counsel for Defendants, Tracy Jay Robinson and Thomas C. Jay and, upon information and belief, the Defendant, Tilli Tomas, Inc. threatened to commence suit against Artyarns unless Artyarns ceased selling its beaded silk yarn and improperly asserted that Artyarns had:

a) wrongfully duplicated Tilli Tomas' beaded silk yarn designs in 2006 and/or 2007 in violation of the Lanham Act, 15 USC 1125, and

b) committed acts of unfair competition in contacting Tilli Tomas' supplier of beaded silk yarn and in obtaining samples of Tilli Tomas beaded silk yarn in October 2005.

28. Mr. Jantzen also falsely asserted that Artyarns beaded silk yarns were inferior to Tilli Tomas' beaded silk yarns.

29. The allegations of the April 18, 2007 letter are false and unfounded.

30. The Defendants have not identified any trade dress aspects of the configuration of their beaded yarn.

31. There are no distinctive trade dress aspects in the configuration of the Defendants' beaded yarn.

32. Artyarns' beaded silk yarn differs from the Defendants' beaded yarn in bead size and yarn construction as well as coloration.

33. The Defendants have no sustainable claim of unfair competition against the Plaintiff.

34. If the Defendants' stated objective of terminating Artyarns' manufacture and sale of beaded yarn is achieved, Artyarns will suffer irreparable loss, damage and harm and monetary damage, upon information and belief in excess of \$75,000 exclusive of interest and costs.

35. The Plaintiff has no adequate remedy at law.

WHEREFORE, the Plaintiff, Artyarns, Inc. requests judgment against the Defendants pursuant to 28 U.S.C. §2201 declaring that:

- a) the Defendants, Tracy Jay Robinson and Thomas C. Jay d/b/a Tilli Tomas and Tilli Tomas, Inc. have no protectable rights in the configuration, construction or appearance of beaded silk yarns;
- b) that the Plaintiff, Artyarns, Inc. has not engaged in unfair competition;
- c) that the Defendants pay the Plaintiff's full costs and attorney's fees incurred in connection with this action; and
- d) for such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
May 15, 2007

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By /Seth Natter/  
Seth Natter (SN 4913)